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Applicant: Pat Reich Examiner: Torres, Alicia M.
Serial No.: 10/821,026 Group Art Unit: 3671
Filed: April 8, 2004 Docket: A480.101.101
Title: RIDING MOWR WITH DECK HEIGHT ADJUSTMENT

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Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Facsimile No. (571) 273-8300

Sir:

I certify that the following papers are being transmitted via telefacsimile and addressed to the U.S. Patent and Trademark Office on the date shown below:

1. Reply Brief Under 37 C.F.R. § 41.41 (3pgs.).

Respectfully submitted,

Date: March 21, 2007

By: 

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Applicant:	Pat Reich	Examiner:	Torres, Alicia M.
Serial No.:	10/821,026	Group Art Unit:	3671
Filed:	April 8, 2004	Docket:	A480.101.101
Title:	RIDING MOWER WITH DECK HEIGHT ADJUSTMENT		

REPLY BRIEF UNDER 37 C.F.R. § 41.41

Mail Stop Appeal Brief – Patents
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P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir/Madam:

This submission is in reply to the Examiner's Answer dated February 22, 2007.

Reply Argument

A. Claims 1 and 14 distinguish over Swartzendruber et al.

The Examiner's Answer responded to Appellant's first argument that Swartzendruber et al.'s plate cannot be considered an arm as defined in claims 1 and 14 with an assertion that "the claim is open and without a specific type of connection structure claimed." As such the Examiner maintained that Swartzendruber et al.'s apparatus is sufficient to read on the claims, maintaining that claims 1 and 14 "do not contain claim language that would preclude this series-connection between Swartzendruber et al.'s arm (90) and lever (62)." Claims 1 and 14, however, claim a *pivotal* connection between a lever and a first end of an arm. An arm is defined in the specification as an elongate metal member that includes a first end, a second end and an intermediate portion that is wider than the first and second ends. A pair of flanges connect to the first end of the arm and define a slot for receiving the foot lever. A pin passes through openings in the flanges and the foot lever to pivotally link the foot lever to the first end of the arm. (See specification page 8, lines 1-7). Claims are to be construed in light of the specification. *Searfoss v. Pioneer Consolidated Corp.*, 374 F.3d 1142, 1150 (Fed. Cir. 2004) (holding correct interpretation of "connect" not to include indirect connection in view of the patent

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specification). It is respectfully submitted that the claimed pivotal connection between the first end of the arm and the lever is not disclosed, suggested or taught by Swartzendruber et al.

The Examiner's Answer responded to Applicant's argument that plate 90 of Swartzendruber does not have a shoulder by maintaining that the edge of plate 90 qualifies as a shoulder. Claims 1 and 14 specify that a shoulder that "extends" normal to the arm (claim 1) or to the direction of displacement of the arm (claim 14). As previously stated, the term "arm" is defined in Applicant's specification as an elongate metal member that includes a first end, a second end and an intermediate portion that is wider than the first and second ends. The first end of the arm is pivotally linked to the lever, and the second end of the arm is connected to a rear shaft assembly associated with the deck lift system. (Specification page 8, lines 1-10). Claims 1 and 14 expressly create a relationship between the arm, the lever and the deck lift system. Claim 1 requires that a second end of the arm be operably connected to the deck lift system. Claim 14 requires that the second end of the arm be connected to the rear rotating assembly of the deck lift system. The arm is disclosed to move linearly in response to a pivotal movement of the lever. (Specification page 7, lines 12-14; page 11, lines 14-15; page 13, lines 2-5; Figs. 6-10). The linear movement of the arm causes a lifting action to the mowing deck by virtue of the connection of the second end of the arm to the deck lift system. (Specification page 11, line 12 – page 12, line 7).

The specification further discloses that the shoulder is secured to the intermediate portion of the arm and prevents a rearward movement of the arm when the shoulder engages, for example, the finger of the transport lock (specification, page 12, lines 13-22) or the cam wheel (specification page 13, lines 11-13). The shoulder therefore is disclosed to laterally extend from the arm in a direction normal to the length of the arm. (Figs. 2, 6-10). The edge of the arm moves linearly with the arm and does not extend normal (i.e., perpendicular) to the linear direction of displacement.

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As previously discussed, plate 90 of Swartzendruber et al. does not have a first end pivotally connected to a lever and does not have a second end operably connected to a deck lift system. As acknowledged by the Examiner, plate 90 of Swartzendruber et al does not connect to a deck lift mechanism at all. In the context of the Applicant's specification, the intended effect of the operable connection between the second end of the arm and the deck lift system is a lifting of the mower deck. *Innova/Pure Water, Inc. v. Safari Water Filtration Systems, Inc.*, 381 F.3d 1111, 1118 (Fed. Cir. 2004). When this claimed relationship is taken into account, it is clear that plate 90 does not disclose, suggest or teach an arm as defined in claim 1 and 14 and does not disclose, suggest or teach a shoulder that extends normal (i.e., laterally) relative to the length of the arm. Applicant respectfully submits that claims 1 and 14 distinguish over the Swartzendruber et al. patent for the additional reasons listed above.

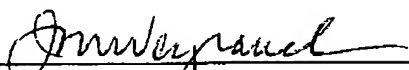
Any inquiry regarding this Reply should be directed to John M. Weyrauch at Telephone No. (612) 767-2511, Facsimile No. (612) 573-2005. In addition, all correspondence should continue to be directed to the following address:

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Date: March 21, 2007

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CERTIFICATE UNDER 37 C.F.R. 1.8: The undersigned hereby certifies that this paper or papers, as described herein, are being transmitted via facsimile to Facsimile No. (571) 273-8300 on this 21st day of March, 2007.

By


Name: John M. Weyrauch